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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/484,730	01/18/2000	Bartfeld Eyal	2000-001	1034

23521 7590 05/06/2005
SALTAMAR INNOVATIONS
30 FERN LANE
SOUTH PORTLAND, ME 04106

EXAMINER

BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/484,730	Applicant(s) EYAL, BARTFELD	
	Examiner Reuben M. Brown	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See enclosed Advisory Action.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed 2/28/05 have been fully considered but they are not fully persuasive.

With respect to the 102(b) rejection using Checco, a rejection under 102(e) would have been proper. Nevertheless, the grounds of the rejection, i.e., merits of the rejection using Checco is maintained. It is noted that applicant does not argue the merits of the 102 rejection using Checco.

With respect to the 103 rejections relying on Checco, in view of Lovett, applicant argues on pages 18-19 that Checco does not disclose the claimed TV messaging gateway and messaging server. Applicant argues that if the data messaging system 304 corresponds with the claimed TV messaging gateway, that then Checco does not disclose a messaging server, especially since Checco does not use the term 'server'. Examiner respectfully disagrees with applicant's assertion.

First of all, it is pointed out that the claimed TV messaging gateway does read on the data messaging system 304. Checco teaches that the data messaging system 304 operates by receiving a request to forward a message to a recipient, determines the format of the message and stores

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the message until the instant message is retrieved by the recipient, see col. 4, lines 46-55; col. 8, lines 58-67 thru col. 9, lines 1-28. Thus it is clear that the data messaging system 304 of Checco operates as a message gateway between a sending party and a receiving party.

Secondly, as for the claimed messaging server, Checco also clearly teaches that messages are identified, stored and retrieved in/from storage devices 412, (see col. 6, lines 1-15) which meet the claimed “messaging server constructed to store and forward messages”. Examiner further notes the definition of a server from the Microsoft Press, Computer Dictionary, (3rd Ed, 1997). The dictionary discloses a definition of server, as “a computer or program that responds to commands from a client. For example, a file server may contain an archive of data or program files; when a client submits a request for a file, the server transfers a copy of the file to the client”. Thus even though the term “server” is not explicitly used in Checco, the storage devices 412 perform the required function and meets the claim, see col. 4, lines 56-58; col. 9, lines 21-48 & col. 10, lines 22-67.

Applicant also argues on page 20 that Checco does not provide the claimed video output module for generating video frame signals corresponding to the message, such that the module is coupled to the downstream network for distributing video frame signals to an addressable terminal”. Applicant points out that Checco did not use the term “video” in the portion cited (col. 10, lines 21-67 thru col. 10, lines 1-10). First of all, it is pointed out that the claimed feature of “video frame signals” corresponds to still images, since each still image corresponds with a frame of video. Thus a high-bandwidth still image reads on the claimed video frame signal,

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which Checco discloses is converted to a format to be displayed on a monitor connected to a set-top box.

Furthermore, it is pointed out that Checco discloses throughout that a message (such as a text or fax message) may be converted to video frame(s) to be displayed on the recipient's computer monitor or a television connected to the aforementioned set-top box (col. 4, lines 25-33; col. 5, lines 1-26; col. 6, lines 39-45 & col. 11, lines 1-10). Finally, it is pointed out that Lovett clearly discloses transmitting still pictures as video frame signals, col. 11, lines 50-67.

On pages 22-26, applicant argues that the references used in the rejection do not have a motivation to combine, because apparently, one or more of them "were not publicly available at the time the invention was filed", see MPEP 706.02. However, it is pointed out that there is no such requirement in making a 103 rejection. For a patent to be eligible for use in a 103 rejection, it must be filed prior to the instant application, not published prior to the instant application.

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Any response to this action should be mailed to:

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or faxed to:

(703) 872-9306, (for formal communications intended for entry)

Or:

(703) 746-6861 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290.

The examiner can normally be reached on M-F (8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Reuben M. Brown


CHRIS GRANT
PRIMARY EXAMINER